

IN THE MATTER OF ARBITRATION BETWEEN

HENNEPIN COUNTY
(Employer)

and

DECISION
(Disciplinary Suspension Grievance)
BMS Case No. 14-PA-0351

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
MINNESOTA COUNCIL 5
(Union)

ARBITRATOR: Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: June 5, 2014 at the Hennepin County
Government Center, Minneapolis MN.

RECEIPT OF POST-HEARING BRIEFS: Both Parties submitted timely briefs as
of June 27, 2014. Accordingly, the arbitrator closed the Record on June 27,
2014, upon receipt of the briefs.

APPEARANCES

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JURISDICTION

The Parties stipulated that this Arbitrator has been selected in accordance with
the provisions of Article 7 (Grievance Procedure), Section 4 of the applicable
labor agreement and thereby possesses the authorities, duties and
responsibilities set forth therein to hear and determine the dispute in this matter.

THE ISSUE

The Parties stipulated the Issue; *Did the Employer have Just Cause to issue a 3-day disciplinary suspension to Timothy Heck? If not, what shall be an appropriate remedy?*

THE EMPLOYER

With a population of about 1.2 million, Hennepin County is the most populous of Minnesota's 87 counties and is home to about 20% of the state's population. The County seat is located in the City of Minneapolis, the state's largest city. The County employs over 7000 employees who provide a full range of public services to the County's communities and citizens. Most of the County's workforce employees are represented, for purposes of collective bargaining, by a number of labor organizations. Accordingly, the County is party to a number of labor agreements negotiated with each of the various labor organizations; one of which is American Federation of State, County and Municipal Employees, Minnesota Council 5 (AFSCME or Union).

THE UNION

AFSCME, Minnesota Council 5, with its principal office located in South St. Paul MN, represents some 43,000 public employees working for the state, various counties, municipalities and political sub-divisions within the State of Minnesota. Among its contractual bargaining units, AFSCME represents and has a labor agreement with Hennepin County covering certain of its employees, including Probation/Parole Officers working in the County's Family Court Services division.

COLLECTIVE BARGAINING HISTORY

Hennepin County and AFSCME have had a continuing and on-going collective bargaining relationship dating back many years and this relationship is reflected in a successive series of labor agreements during that period. The current labor agreement; which the Parties agree is applicable to this matter, was effective January 1, 2014 and is scheduled expire on or about December 31, 2015. The bargaining unit, covered by the agreement consists of Probation and Parole Officers employed by the County.

BACKGROUND

The following outline should be viewed as a reasoned attempt to compile a fact narrative based upon the hearing Record evidence and testimony; which was not the subject of credibility issues or related controversy.

As noted in the Statement of the Issue, the Grievant in this dispute is Timothy "Tim" Heck. The grievance issue concerns a three-day disciplinary suspension, without pay, issued to him by the County on January 29, 2013.

At the time of the three-day suspension, Mr. Heck had approximately nineteen years of employment with the County. That service was as a Probation/Parole Officer in the Department of Community Corrections & Rehabilitation (DOCCR), Adult Services Division and specifically in the Family Court Services (FCS) section.

At all times material herein, Mr. Heck was employed in the Family Court Services section in the job classification of "*Mediator-Evaluator Probation/Parole Officer Career*".

The County maintains and administers a formal Performance appraisal system for its employees and each employee receives a written Performance Report from his/her immediate supervisor at least annually. A review of Mr. Heck's annual Performance Reports back to at least 2002 disclosed that his annual overall performance rating was typically, "Significantly Above Average" or "Fully Capable" on a scale of 1) Outstanding, 2) Significantly Above Average, 3) Fully Capable, 4) Needs Improvement or 5) Unsatisfactory.

A review of his past performance also indicates no formal, past record of disciplinary action until January, 2012.

In 2011, the County internally became aware that there were apparent problems in the operation and performance of the Adult Services section and more specifically within the Family Court Services division; where Mr. Heck worked. A major in-depth investigation ensued. At the conclusion of the investigation, the results were carefully examined and analyzed. Based upon the investigation, the County determined that due to rampant malfeasance, mismanagement, theft, dishonesty, failure to adhere to policies, goals, etc., the Family Court Services division, as a whole, was no longer capable of carrying out its mission and duties. As one stunning example, the investigation disclosed that a number of employees in the Court Services division were concurrently working at other jobs and/or for other employers, while being employed and paid for full-time work by the County. The problems involved managers, supervisors and employees in the division.

Armed with the detailed findings of the investigation, the County subsequently initiated a major "house-cleaning" within the Family Court Services division. Management/supervision of the division was completely replaced and formal disciplinary action was taken against a number of individuals employed in the division. More specifically, three (3) individuals were discharged; two (2) resigned in lieu of termination; four (4) individuals received disciplinary suspensions; one (1) received a written reprimand and one (1) received a

counseling. As a result, about half of the 24 individuals working in the Family Court Services division were formally disciplined or counseled.

Mr. Heck was among those disciplined. The investigation and his own admissions established that he had extensively used his County-owned work computer to engage in non-work related personal activities and that such use went far beyond the incidental or occasional use of work computers for personal use permitted by County policy. Additionally, the investigation disclosed and Mr. Heck admitted that on several occasions he had volunteered as an official for tennis matches and related activities for such organizations as the Minneapolis Aquatennial Celebration and the Boys and Girls State High School Tennis Tournaments. To perform these activities; which routinely occurred during the course of his regular workdays at the County, he surreptitiously left work without informing anyone of his planned absence and accepted pay from the County for work hours spent in those non-work related activities and away from his place of employment.

As the County subsequently contemplated formal disciplinary action for the individual offenders, it was initially decided to give Mr. Heck a three (3) day disciplinary suspension, without pay. However, prior to actually imposing the discipline, the County met informally with the Union, apparently to forewarn or give it a "heads up" as to what was about to occur. The hearing Record is essentially silent as to precisely what occurred in those discussions. However, the County concedes that it subsequently decided to reduce Mr. Heck's disciplinary suspension from three (3) days down to one (1) day.

The one (1) day disciplinary suspension was formally issued to Mr. Heck, for his admitted misconduct, via a letter dated January 10, 2012 from Chester Cooper, the Area Director for the Department of Community Corrections & Rehabilitation (DOCCR). In the letter, Mr. Cooper specifically noted that, "*...continued incidents of this nature or a similar nature will result in additional, more serious action up to and including termination.*"

Mr. Heck did not grieve or otherwise challenge this disciplinary action.

As previously noted, per the investigation of the Family Court Services division problems, the County removed/replaced the entire management/supervisory staff within the division. Accordingly, after the first of the year, 2012, the County named Renee Meerkins, as the new Manager of the Family Court Services division and in about February, 2012, Michael Weinstein became Mr. Heck's new immediate Supervisor. As a result of their employment with the County, Heck and Weinstein were aware of, if not familiar with one another.

According to Mr. Heck's testimony in the hearing, upon learning that Mr. Weinstein would be his new supervisor, Heck let it be known to Weinstein that he did not think that Weinstein should have gotten the supervisor position. He told

Weinstein, that in his view, there was a more qualified or deserving female employee who should have received the promotion.

One of Mr. Heck's basic job functions is his involvement in child custody issues and situations that eventually come before Family Court Judges in the 4th Minnesota Judicial District Court. His involvement in such cases may come both in his role as a qualified, neutral mediator; where he attempts to facilitate communication between the parents with the hope that they can reach some sort of mutually acceptable custody arrangement and agreement. If mediation is not successful and the dispute is going to require a formal judicial decision, Mr. Heck is concurrently responsible for personally investigating and evaluating each of the critical factors that the Court will consider and weigh in making a formal decision on the custody issues. Because of his training and experience, the judges rely heavily on his investigative findings, evaluations, opinions and assessments in reaching their decisions.

Shortly after assuming his new role as Heck's immediate supervisor, Mr. Weinstein became aware that Family Court Judge Jane Ranum had recently criticized and chastised Mr. Heck in open court for his poor work performance on a custody case that she was scheduled to formally rule upon. Judge Ranum specifically criticized Heck for not reviewing critical past court, prison and criminal records. She noted that by not reviewing those records, he also overlooked various pertinent parole, psychological tests and treatment reports and pre-sentence investigative reports - all of which contained information crucial to determining the custody issues. As a result of these deficiencies by Heck, Ranum was unable to make a formal determination on the custody matter, as scheduled, and such determination would have to be rescheduled until such time as the relevant information became available.

Weinstein met with Judge Ranum to discuss the situation and to assure her that the deficiencies would be corrected quickly. In the course of that conversation, he learned from Judge Ranum that this was not the first time that she had found Mr. Heck's work to be unsatisfactory. She provided Weinstein with a copy of her Decision in a custody case dating back to about March, 2011; where she specifically found aspects of Mr. Heck's investigation, evaluations and recommendations in the case to be glaringly deficient. She had determined that Mr. Heck's evaluation report in that matter was "*fundamentally flawed*."

Because of his short tenure in the Supervisor position, Weinstein decided to consult with his superiors regarding the situation. He subsequently discussed and reviewed the situation with his manager, Ms. Meerkins, and other DOCCR officials, along with representatives from County's Human Resources and Labor Relations sections. Mr. Heck was subsequently interviewed on or about February 27, 2012 and given a full opportunity to respond to and address the Judge Ranum situation and allegations. Following a detailed review and discussion of the investigative findings in the situation, it was the consensus of

the County that a one (1) day disciplinary suspension was appropriate for Mr. Heck.

On March 6, 2012, Supervisor Weinstein personally presented Mr. Heck with a letter informing him that he was being given a one (1) day disciplinary suspension for his grossly negligent work performance on the recent custody evaluation report that he had submitted to Judge Ranum and for which she had soundly chastised him. The letter went on to specify the details of his deficient work performance and also specified the policies and procedures which he violated. The letter noted that due to his gross negligence in this situation, his competence as a Career Probation Officer had come into question. Weinstein stated that this required him to work with Mr. Heck through a Performance Improvement Plan (PIP) to insure that his future work performance clearly meets the requirements of the department.

This letter, like the disciplinary letter previously issued to Heck on January 10, 2012, also concluded with the admonition that continued incidents of this or similar nature will result in additional, more serious disciplinary action up to and including termination.

Mr. Heck did not grieve the March 6 disciplinary suspension.

On or about March 23, 2012, Supervisor Weinstein presented the written Performance Improvement Plan (PIP) to Mr. Heck. The PIP was nominally to be in effect for one (1) year, April 1, 2012 to April 1, 2013. The PIP noted that its focus would be on Heck's performance in completing custody/parenting evaluations and reports to the Family Court Judges to insure that his work performance fully meets and addresses the standards of FCS and the needs and requirements of the Court.

The PIP then reviewed his past problems and deficiencies with respect to his Evaluation investigations and reports to the Court and explained exactly how Weinstein expected to assist him in correcting each of those noted deficiencies. Weinstein pointed out that the key to the success of the PIP would be frequent, periodic meetings with Mr. Heck to discuss and review his planned actions with respect to the specific Custody/Parenting Evaluation cases assigned to him. As Weinstein viewed it, the meetings would be collaborative in nature where Mr. Heck would outline his planned actions and Weinstein would offer suggestions for alternative approaches which might improve the quality of the work, better achieve the expected work standards and avoid any repetition of past problems. The PIP then outlined six (6) specific Performance Expectations to be accomplished over the course of the ensuing twelve months:

1. Timely submission of rough drafts of Evaluations Reports to Supervisor.

a) Evaluators are expected to submit reports for supervisor review at least one day prior to when the report must be sent out to meet the 10-day minimum review period , or by a court order to submit the report less than 10 days prior to a hearing.

b) You will be expected to submit drafts of reports 4 business days prior to the date on which the report should be released. This expectation is necessary given that the previous submission of your reports 1 day prior to the due date has not provided adequate time for review and revisions.

c) Documenting incidents of reports being submitted less than 4 business days before the due date, without supervisory approval, will measure progress in this area.

2. Increase the quality of written custody and parenting time evaluations.

a) Evaluators are expected to comply with court orders when completing evaluations. This includes addressing all statutory requirements and any other specific issue(s) the court orders for evaluation. Meeting acceptable standards for custody and parenting time evaluations includes the accumulation of relevant information about the family, analysis of the data and its organization into a cogent report to the court. This requires identifying critical areas in each evaluation and reviewing all relevant collateral information. Two court orders regarding cases in which you produced evaluations have provided critical findings demonstrating that you did not seek collateral information relevant to substantial concerns in those cases and you did not adequately incorporate collateral information, that you did possess, into your analysis and recommendations.

b) The acceptable standard in an evaluation is to seek out collateral information related to major concerns raised by the Court, the parties and reliable collateral contacts. This typically includes information related to medical care, education, daycare, mental health, criminal records/police contacts, chemical health and child protection. Judgment is required in deciding when to exclude or not focus on certain information. The acceptable practice is to explain the rationale behind decisions not to seek information possibly viewed by the court or one or both of the parties as relevant.

c) Progress will be measured in the review of the final draft of evaluations. I will document key issues from our meetings regarding each of your evaluations and determine if the final report contains references to related collateral information and/or your observations as documented during our previous meetings. The analysis of those concerns should logically relate to the recommendations in your evaluation. Acceptable evaluation reports will receive approval per supervisor's signature. Due to the subjective nature of report assessment, both of us will maintain drafts of all reports, along with supervisory comments from those meetings and notes specific to feedback on all rough drafts. This documentation will serve as a reference to measure improvement in your investigation and report writing abilities. At a six month review, we will look at this information to establish a consensus on where you are improving and where you require continued support. Your ability to independently identify and incorporate relevant collateral information into your reports should increase as well as your ability to include that information into your case analysis and recommendations.

Finally, it was noted that failure by Mr. Heck to achieve the specified performance objectives as set forth in the PIP might result in disciplinary action up to and including termination.

The County notes that most of the procedures, processes and standards adopted by the County and governing the work performance of the Evaluators, like Mr. Heck, are dictated by statute, case law and/or court rules. For example: MN Statute §518.17 specifies thirteen (13) relevant factors to be considered by a court in determining the "*best interests of a child*" in custody/parenting cases. Mr. Heck's job is to investigate and evaluate each of those factors and present his detailed findings and conclusions to the court to enable the judge to make an informed and correct decision in the matter.

Over the course of the subsequent months, Supervisor Weinstein testified that he had PIP-related meetings or emails with Mr. Heck on at least 46 occasions. As he had advised Mr. Heck in the PIP letter, Weinstein maintained a chronological set of notes regarding those meeting and email contacts, together with notes of other contacts related to Mr. Heck's work performance.

A review of Mr. Weinstein's notes, which were entered into the hearing Record, indicate that;

- Mr. Heck did not like nor respect Mr. Weinstein, as his immediate supervisor.

- Mr. Heck regarded the PIP as unnecessary, as he remained convinced that there were really no problems with his work performance as an Evaluator.
- Mr. Heck was defensive and resistant to most of Weinstein's suggestions, recommendations and instructions as to alternative ways that Heck could accomplish his work more effectively. He generally argued against those suggestions up to the point where Weinstein was compelled to essentially order him to do it, at which point Heck finally agreed.
- Over the ensuing months, Mr. Heck became increasingly vocal to his work colleagues about his dissatisfaction with Mr. Weinstein and made no effort to hide his unhappiness from anyone in the division who would listen.
- In one meeting between Heck and Weinstein on July 16, 2012, Weinstein acknowledged that he was well aware of Heck's current state of unhappiness and dissatisfaction. He noted he was also aware that Heck was actively interviewing for other positions in the County, and was expressing anger over the fact that those efforts had thus far been unsuccessful and that he felt he was being screwed over and treated unfairly; because he was a long-term employee who wasn't being given a fair shake by the system. Weinstein told him that his openly negative comments and statements were probably having a poisonous effect in the workplace. In the same meeting, Heck also told Weinstein that it was his belief and perception that the PIP and the related situation were just a tool being used by Weinstein to get rid of him. Weinstein differed with him on that point and said that there was no intent to use the PIP as such a tool, that the sole purpose and intent of the PIP was to correct Heck's past work performance problems and make his work more efficient and effective. According to Weinstein's notes, Heck said he would take Weinstein's comments about the PIP to heart.

On December 5, 2012, Weinstein and Heck met to review his current cases and discuss his work plans for those assignments. In his notes regarding that meeting, Weinstein wrote;

"Many issues addressed. Reviewed my complete sense of frustration at him not having releases signed at this point, despite this issue being a focus of our prior meetings. Tim rationalized and made excuses. For example, reiterated a standard comment that he doesn't do releases until he has met with all the parties. I pointed out a number of problems with this, such as nearing the end of the eval and not being able to address concerns raised, or hearing information at a late date that contradicts information and makes getting one collateral or another more important. Talked about time and energy now required to secure releases from parents that he wasn't planning on seeing again in the office, the fact that

he should automatically complete school releases even if he subsequently decides he doesn't need to contact them. Both parents have a history of incarceration for drug-related offenses and another is on supervision, yet he has no release secured for Blue Earth County for such records. I was blunt with my frustration.

Conversation veered back to his PIP. Tim expressed regret at not defending himself more forcefully, believes he was a patsy and that there was nothing wrong with his reports or methods. He expressed that, 'you write a good report (meaning the PIP). Anyone reading that would think I am a piece of garbage.' I explored my concern that Tim takes no responsibility and sees no validity to the criticism of his work performance. He defended, saying the court (Judge Ranum) adopted his recommendations and so did the GAL. I pointed out that this theme of lacking collateral and depth in his evaluation reports was not a new idea with Ranum and had been presented to him throughout the years leading to this. Reinforced that I have been focused on helping him succeed and cannot understand how it is that we are here today having the same conversation about good case management practices meant to avoid this very predicament. Tim tried to deflect with comment about work loads, but I did not let him off the hook, saying that none of that negated the issues and his lack of action on suggestions."

On December 19, 2012, Weinstein met with Rita Vorpahl from Human Resources and Dick Tiedeman, the DOCCR Workforce Manager. He reviewed Heck's progress or lack of it regarding the PIP, including the discussions with Heck in the meeting on December 5 and asked if he was on solid ground if he decided to press Heck more forcefully for progress on the PIP, such as "requiring" him to obtain all necessary releases.

After some discussion during which he was assured that his current plan of action was fully appropriate under the circumstances; Weinstein indicated that he would hold off on pressing Heck more forcefully and would wait to see his next evaluation report to see if it shows progress on any or all of the critical work performance items. Vorpahl and Tiedeman indicated that course of action sounded appropriate.

In the latter part of December, 2012, Weinstein was awaiting a draft evaluation report from Mr. Heck on a case that was due in court (Judge Robbins) shortly. When queried about the status of that matter, Heck told Weinstein that the matter was in the process of settling and, therefore, there would be no need to submit the Evaluation report. Weinstein noted that Heck was under a standing instruction to keep him fully informed of any potential settlement situations, so that the two of them could jointly track the progress of any settlement discussion. That instruction would also insure that the Evaluation report would be completed in a timely manner for submission to the Court, if a settlement did come about.

Weinstein subsequently received a phone call from one of the parties in the above case. That party complained that Heck was trying to force him to join in the proposed settlement and refused to consider any of his objections or proposals, relative to the settlement. The party said he felt that Heck was biased against him. Weinstein told the party that he was free to file a complaint, if he wished.

Weinstein subsequently informed Heck of the phone call from the party. Heck said he had already closed the case due to the settlement and asked what he should do? Weinstein told him to just wait and see if the party actually files a Complaint.

On December 31, 2012, Heck informed Weinstein that he was going to take the next week off. Weinstein was somewhat surprised, as Heck had given no previous indication of his intent to take that time off.

On about January 14, 2013 Weinstein informed Heck that party who had called back in December to complain, had now filed a formal Complaint in protest of the alleged settlement in the matter and that it also looked like the case would go to court, as scheduled, on January 23, 2013.

On January 15, 2013, Weinstein met with Heck to review his work progress on an evaluation report which to be in draft form by February 1, 2013. Unfortunately, the meeting had to be cut short because Heck had to leave for an appointment. As a result, Weinstein was unable to ascertain whether Heck was in compliance with the pertinent PIP directives and instructions at that stage of the evaluation.

On January 16, 2013, Weinstein received a phone call from another party in the alleged settlement case and in which a formal Complaint had now been filed by another party in the case. This party also complained that she had tried to tell Heck that she was not in favor of the proposed settlement, but he essentially ignored her and said that if the matter went to court, his recommendation to the judge would be the same as the arrangement set forth in the settlement. The party said that Heck never asked her why she objected to the settlement or why she was concerned about it.

On January 17, 2013, Mr. Heck was summoned to an investigatory interview concerning his work performance and progress per the PIP and related recent work performance questions. Union representation was made available during the meeting.

Mr. Heck was off work due to illness on January 25 through the 28th.

Upon his return to work on January 29, 2013, he received a formal disciplinary letter from Mr. Weinstein. The letter informed him that he was receiving a three

(3) day disciplinary suspension. The letter stated that he was being disciplined as a result of facts revealed by the recent investigation of his work performance conduct in the case for Judge Robbins. The letter specifically noted the following offenses:

1. Mr. Heck has been instructed, in the course of numerous meetings with his supervisor, to obtain signed information release forms at the initial meeting with each party to insure that he could later efficiently collect relevant collateral information for the Evaluation report, regardless of whether the parties subsequently reached a settlement of the matter. Although he had specifically agreed to follow that instruction, in actuality, he blatantly ignored that directive. As a result, he has failed to gather the necessary file content and investigative information in order that the Evaluation report be completed within the timeframe set by County policy and the court.

2. In the course of numerous discussions, over the past months, on ways to improve his work performance skills and practices, Mr. Heck was specifically advised to bring to his supervisor's attention those cases in which the parties expressed the possibility of settlement during the course of the evaluation investigation. Such communication enables discussion with the supervisor on appropriate actions in managing the progress of the evaluation while concurrently assessing the need to inform the court of possible settlement. Mr. Heck failed to notify his supervisor of settlement discussions in cases assigned to him after being directed to do so. Specifically, in the case in which his work performance and conduct was most recently investigated, he did not report the potential to settle the case in a timely manner and then only after his supervisor inquired about the status of the case, given that there was a rapidly approaching due date for the evaluation report. Heck admitted, at that point, that he had not gathered collateral information or completed all appointments necessary to complete the Evaluation report, if settlement failed.

The letter went on to enumerate the specific Court Services Policies and Procedures and County Department Policies and Procedures which his conduct violated and which provided the basis for the disciplinary action taken.

The letter also noted that he had previously received a one (1) day disciplinary suspension on March 6, 2012 for this same type of misconduct and pointed out that he was warned at that time that continued incidents of this nature or of a similar nature would result in additional and more serious disciplinary action, up to and including termination. Accordingly, in view of the fact that the current misconduct was the same as or similar in nature to those covered by the previous disciplinary action, a three (3) day suspension is now appropriate.

THE GRIEVANCE

On February 19, 2013, pursuant to Article 7 - Grievance Procedure, of the applicable labor agreement, Mr. Heck and the union filed a timely grievance in protest of the County's January 29, 2013 three (3) day disciplinary suspension.

The grievance specifically alleged that the County lacked "Just Cause", as required by Article 32 of the labor agreement, to justify the disciplinary action. Additionally, the grievance alleged that the County was not following a Letter of Understanding between the Parties entitled "Workloads/Caseloads" when assessing employee's work performance.

Remedy: The grievance stated that Mr. Heck and the Union were seeking removal of the three-day suspension and that the County consider a lateral transfer for Mr. Heck from Family Court Services to another area within DOCCR.

Obviously, subsequent efforts by the Parties to informally resolve the grievance were unsuccessful and, ergo, the matter is now before me.

RELEVANT CONTRACT LANGUAGE

Article 32 - Discipline, as set forth in the applicable labor agreement states;

Section 1. The EMPLOYER will discipline employees in the classified service only for just cause.

Section 2. Discipline, when administered, will be in one or more of the following forms and normally in the following order:

- A. Oral Reprimand*
- B. Written Reprimand*
- C. Suspension*
- D. Discharge or disciplinary demotion*

POSITIONS OF THE PARTIES

The Employer:

The applicable labor agreement permits the Employer to administer discipline to employees only if it has "Just Cause" to do so.

Based upon the record testimony and evidence in this matter, the Employer has clearly met its burden to demonstrate Just Cause for the three (3) day disciplinary suspension imposed upon employee Timothy Heck on January 29, 2013.

The Employer's action is clearly in accord with Arbitrator Carroll R. Daugherty's well-known Seven Tests of Just Cause.

1. Reasonable Rule or Work Order - Mr. Heck, at all times material herein, was aware of the rules, policies and performance expectations applicable to him and had also been forewarned in his disciplinary action in March, 2012 and in his subsequent Performance Improvement Plan (PIP) of more serious disciplinary consequences should he fail to match his work performance to the required standards.
2. Notice - The Family Courts Services division's rules, policies, procedures and performance standards are foundational to the work prescribed by state statute, expected by the district court judges and established by DOCCR. With more than nineteen years of service in the Family Court Services Division, Mr. Heck was well aware of and familiar with all of those requirements.
3. Fair Investigation - The Family Court Services management team ensured that fair, objective and non-discriminatory work performance standards, applicable to Mr. Heck and all other Mediator/Evaluator employees, were considered for the data review and at every coaching session with his supervisor, Mr. Weinstein. Mr. Heck was afforded every opportunity to satisfactorily address his work performance problems and, of course, avoid further disciplinary action.
4. Sufficient Investigation - The Family Court Services management team reviewed all data, records, correspondence and previous discipline germane to Mr. Heck; prior to making a final decision regarding the case at hand.
5. Proof - The Family Court Services management team made its final determination, with respect to disciplinary action for Mr. Heck, only after a comprehensive investigation and review of all the available data.
6. Equal Treatment - Mr. Heck was held to a consistent, fair and unbiased standard of work performance shared by his Mediator/Evaluator colleagues and supported by the bench. Notwithstanding false allegations to the contrary, there exists not a shred of evidence that Mr. Heck was treated in a partial or discriminatory manner.
7. Appropriate Discipline - Mr. Heck's three-day suspension in January, 2013 followed a one-day suspension some ten months earlier for nearly identical misconduct and violations of policies and procedures. This three-day suspension is reasonably related to the

proven offense, the previous misconduct and clearly meets accepted progressive discipline standards.

Response to Union Assertions and Contentions:

1. In his direct testimony, Mr. Heck contended that he was unfairly and disparately required by Mr. Weinstein to obtain information release forms from both parents during his initial meetings with them. That contention is false. Neither Mr. Weinstein nor the PIP ever "required" Heck to collect release at every initial meeting. The PIP only states that one purpose of the periodic meetings between Heck and Weinstein will be to "*identify all potential relevant collateral sources and ensure releases of information are obtained and sent out.*" Nowhere is there any mention of a hard and fast requirement. The Arbitrator will find numerous instances in the record where Weinstein documented Mr. Heck's on-going resistance to even "*...prepping clients to expect to complete information release forms at their first appointment.*" In one instance, where the need for collateral information was discussed with Mr. Heck, Mr. Weinstein noted that Heck had met with "*both parents twice and did not get any releases for information.*"
2. Union witness Stephen Nesser, one of Mr. Heck's work colleagues, tried to testify about Mr. Heck and his work performance during the period being reviewed. It should be noted, however, that Mr. Nesser was never privy to the specific documented work performance expectations that Mr. Weinstein had presented to Heck. Mr. Nesser also worked in a different group and under a different supervisor than Heck. He was never a party to the many coaching meetings that took place between Weinstein and Heck, never directed Heck's work activities and was not responsible for formally assessing and reviewing his work performance.
3. In its opening statement at the hearing, the Union said it intended to "*...prove that Tim's (Heck) expectations were unattainable.*" Apparently the Union was taking the position that the PIP set forth work performance goals and expectations that in reality were totally impossible for Heck to achieve. However, the Union never offered or presented any specific testimony or evidence to support this assertion.
4. In its opening statement, the Union also alleged that Mr. Weinstein's requirement that Mr. Heck advise him of all potential parental settlements in his custody/parenting case was not a "policy" in the Family Court Services division. The Union's contention, as supported by Mr. Nesser's testimony, essentially serves as a red herring - the issue at hand is not whether Mr. Weinstein's requirement to be informed of potential settlement situations is a formal division policy. Instead, the requirement is a reasonable and logical part of the overall goal of the PIP - to help

and assist Mr. Heck in correcting and improving his work performance. It should be noted that the Union is not contending that the requirement violates any existing County policy.

5. Finally, Mr. Heck testified that it was his belief that Mr. Weinstein was "out to get him" and have him discharged. His allegation is totally unfounded and without merit. When questioned by the arbitrator as to what Mr. Weinstein had to gain by targeting him, Mr. Heck really had no answer. Neither Mr. Heck nor the Union have ever filed any internal complaint with the County alleging that Mr. Heck was the subject and target of bias, discrimination or retaliation. That Mr. Weinstein custom designed and authored the PIP only for Mr. Heck attests to the fact that no other employee's work performance merited or required such a plan or action.

Conclusion:

At every turn Mr. Heck could have and should have accepted responsibility for his work performance problems and availed himself of the tools and opportunities provided to remedy those problems. Instead, he chose to set his own performance standards and ignored his supervisor's directives and expectations. It is poignant and telling that Mr. Heck said as much in his hearing testimony. Under questioning by the arbitrator, Mr. Heck stated that his three-day suspension should not be reduced; but, rather, it was "*totally unjust*."

The Employer's disciplinary three (3) day suspension of Mr. Heck for his confirmed misconduct meets the contractual Just Cause standard. Accordingly, the Employer respectfully requests that this Arbitrator deny Mr. Heck's grievance in full.

The Union:

It is clearly the position of Mr. Heck and the Union that the County lacked Just Cause to justify the imposition of a three (3) day disciplinary suspension on him on January 29, 2013.

The basis of the disciplinary action appears to center around a custody/parenting case that was assigned to Heck in about September, 2012. From the point of the assignment, Heck had 120 days to complete his evaluation of the matter and submit his report to the court. This timeframe is the standard per Family Court Services (FCS) division policy. According to the January 29 disciplinary letter, he engaged in the following misconduct in his handling and processing of that case:

1. Insubordination by conducting himself in a manner which reflected negatively on the County.

Response: Black's Law Dictionary (7th Ed.), p.802 defines insubordination as "*A willful disregard of an Employer's instructions*." FCS Mediator/Evaluators, like Mr. Heck, are

strongly encouraged by both management and judicial officers to seek settlements of custody/parenting disputes, while conducting the formal case evaluations. The County provided no evidence that Mr. Heck's actions in connection with the case in question indicated that he was insubordinate or that his actions reflected negatively on the County. On the contrary, by supporting the parties' own settlement efforts, Mr. Heck's actions actually reflected positively on the County. Furthermore, the settlement reduced the conflict between the parties and, in this instance, served the best interests of the children.

2. Insubordination for unprofessional conduct per Department of Community Corrections and Rehabilitation (DOCCR) Policy B 16.f.

Response: The disciplinary suspension letter states that this act of insubordination occurred when Mr. Heck failed to advise his supervisor, Mr. Weinstein, of the potential for a settlement in the case and also failed to gather collateral information during the first meetings with the parents. Neither DOCCR nor FCS policies require a Mediator/Evaluator to notify their supervisor when settlement efforts occur during the course of an evaluation. Nor was there any requirement that Mr. Heck inform Mr. Weinstein of pending settlements, in the PIP. Mr. Weinstein and the court encourage Mediator/Evaluators to seek settlements in the course of performing evaluations. Mr. Heck's successful efforts to bring the parties to a settlement was not insubordination, but rather quality work consistent with the expectations of management and the court.

3. Failing to gather relevant information and collaterals during the course of his investigation and evaluation.

Response: Mr. Heck's PIP required him to have parties sign all information release forms during his first meeting with the parties. Mr. Weinstein, in his hearing testimony, acknowledged that such an expectation was unrealistic, given that new information subsequently revealed in the course of the evaluation investigation may necessitate requesting additional information release throughout the evaluation process. Furthermore, with regard to the case in question, M. Heck sought and secured a settlement from the parties. FCS Policy 5.5-01.9a states that when a settlement is reached in a custody/parenting case during the course of an evaluation investigation, the Mediator-Evaluator is excused from writing reports. Mr. Heck helped the parties reach a settlement and there was no harm to the parties, to

Family Court Services or the Court, by Mr. Heck not gathering collateral information in the matter.

4. Failing to continue the case "only when circumstances require."

Response: In this instance Mr. Heck followed Family Court Services Policy 5.5-01.9a by closing the case when settlement was reached. Furthermore, after Mr. Heck helped the parties reach a settlement, he gave them a written copy of their agreement, allowed them the required ten days to review the agreement and then confirmed, with both parties, that they were still in agreement before submitting the settlement agreement to the Court. Mr. Heck went beyond normal practice in his settlement efforts. Mr. Heck continued his case only when the circumstances required. It should also be noted that Mr. Heck's annual work performance reviews from 2003 through 2010, under supervisors Doneldon Dennis, Michael Chamblin and Carol Tellett, rated him as "*Outstanding*" under "*Moves cases in a timely manner, commensurate with staff availability and client cooperation.*"

5. Failing to compile accurate and thorough case information and not maintaining complete and accurate records.

Response: Management provided neither testimony nor evidence that Mr. Heck failed to maintain complete and accurate records of his meetings with the parties. His notes, settlement communications, Court orders, communications with parties and counsel are all part of the parties' Family Court Services file, which fully documents Mr. Heck's compilation of accurate and thorough case information.

In the course of his testimony in the hearing, Mr. Weinstein further attempted to criticize and degrade Mr. Heck's work performance in the following ways:

1. He accused Mr. Heck of failing to "*recognize the serious nature of his work.*"

Response: Mr. Heck's work colleague, Steven Nesser, testified about his experience working with Mr. Heck for over 17 years as a co-member of a peer supervision group. M. Nesser noted that Mr. Heck is dedicated to his clients, is insightful, shared his struggles with his own cases openly in peer supervision and offered helpful advice to his colleagues in peer supervision. According to Nesser, other Mediator-Evaluators in FCS sought out Mr. Heck's advice and counsel, recognizing his commitment to the work.

Mr. Weinstein approved Mr. Heck's numerous evaluation reports during his two-plus years as his supervisor. Weinstein did not mention a single incident in any of those reports where Mr. Heck failed to understand the gravity and importance of his work. Citing one case as the basis of discipline without looking at the record as a whole is not an accurate reflection of Heck's work nor has Weinstein conducted a thorough investigation into the performance of Mr. Heck, which in it self is enough to show that there was not just cause in this case.

2. Mr. Heck lacked the ability to recognize what is important in a custody/parenting evaluation.

Response: Mr. Heck did not complete the cited evaluation because a settlement was reached by the parties. Rather, he focused on settlement efforts - both at the request of the parties and as is expected by the Court and FCS management. Mr. Heck's successful settlement efforts indicate that he recognized what is important in this particular evaluation and successfully pursued it. Mr. Weinstein testified, "*A resolution is what helps people move on.*" Mr. Heck concurred and proceeded to do so with this family.

Furthermore, FCS Policy 5.5-10.1 states, "*Supervisory review of reports is to ensure conformity of reports with existing law, policy and procedure, to correct typographical, grammatical and syntactical errors and to ensure the logical consistency, structure and apparent objectivity of reports. It is not intended to substitute the supervisor's style of writing for the evaluator.*" Mr. Weinstein admitted he and Mr. Heck had significantly different writing styles. Mr. Weinstein, in insisting that Mr. Heck change his writing style was violating that policy.

3. Mr. Heck absolutely failed to follow Mr. Weinstein's directions.

Response: This hyperbolic language of "absolutely" is consistent with Mr. Weinstein's record testimony. For example:

Q. Mr. Olness: "Did Mr. Heck follow your instructions?"

A. Mr. Weinstein: "No."

In Mr. Weinstein's chronological notes; which included his meetings and email contacts with Mr. Heck, he details the many times that Heck did not follow his directions. For

example, by scheduling appointments, getting information releases signed, reviewing cases in detail and following directions in closing cases. While Mr. Weinstein's notes also detail allegations that Mr. Heck failed to follow directions, it is clear that there are many more instances documented where Mr. Heck did follow his directions. Additionally, Mr. Weinstein provided contradictory testimony regarding Mr. Heck's work. In one instance he testified that Mr. Heck "did not ever come in and process cases [with Weinstein]. However, Mr. Weinstein also testified that Mr. Heck processed cases with him on 34 occasions in the previous year, as part of his PIP program.

Mr. Heck understood that he and Mr. Weinstein were not compatible. Mr. Heck took reasonable steps to remedy this incompatibility. He talked with Mr. Weinstein about their disputes. Mr. Weinstein's notes detail this. Mr. Heck then requested a new supervisor, but that request was refused by FCS management. Mr. Heck also sought to transfer within DOCCR. He interviewed 20 times and each transfer was denied. It is widely understood among probation officers in DOCCR that the Family Court Services job requirements are among the most difficult in DOCCR.

Conclusion: Clearly Mr. Weinstein believes that all the problems lie solely with Mr. Heck. Nevertheless, this denies the obvious truth that Mr. Heck performed his job well for several previous supervisors for 17 of his 18+ years with FCS and the County. Mr. Heck was not insubordinate with Mr. Weinstein, he did request the appropriate collateral information and got signatures on the information release forms which he thought were needed at the time he thought they were needed. The three (3) day disciplinary suspension was issued based on the handling of one particular case and did not take into consideration all the other cases that Mr. Heck had previously handled during the course of his 18+ year career as a Mediator-Evaluator for the County. This indicates that there is a flaw in the Employer's argument for Just Cause.

The Union respectfully requests that the grievance be sustained and the grievant be made whole.

ANALYSIS, DISCUSSION AND FINDINGS

As I completed another review of the record testimony and evidence, I noted how divergent the Parties were with respect to their position and views of Mr. Heck's work performance during the period of focus - from roughly 2010 to the first part of 2013. Their positions are 180 degrees from one another and they share very

little, if any commonality.¹ Summarizing the Parties' respective positions and perspectives:

The County-Employer: The County sees evidence of problems in Mr. Heck's work performance becoming evident in as far back as 2010. It viewed his performance as continuing to degrade over the course of the next couple of years to a point where management determined that formal disciplinary action and concurrent corrective action were necessary to remedy the situation.

Mr. Heck and the Union: They contend that Mr. Heck's work performance during the period 2010 into 2013 was essentially at the same level - *Fully Capable to Significantly Above Average* - as it had been since he commenced employment with the County back in the 1990s. Mr. Heck and the Union suggest that Supervisor Weinstein's perception of "problems" with Mr. Heck's work is the result of their incompatible personalities and the different styles/views that they have in addressing the work. Accordingly, Mr. Heck and the Union are firm in their position that Mr. Heck has had no past "problems" with his work performance and, therefore, the County's past disciplinary actions and the PIP are totally unjustified and totally lack any semblance of Just Cause.

Only a careful review and analysis of the record testimony and evidence will reveal which position or perspective is factually accurate. Turning to the record, there are several facts and situations that appear relevant to the question of whether Mr. Heck was experiencing any notable work performance problems during the period 2010 to 2013:

- In Mr. Hecker's 2010 Performance Report, his then supervisor, Carol Tellett, indicated that Heck's work performance "*Needs Improvement*" in two specific areas; 1) *Continues cases only when case circumstances require* and 2) *Consistently submits reports three full working days in advance of the due date to allow for typing and supervisory review*. In her related comments in the report, she noted that,
"*...I have encouraged him to be more expansive in his analysis and to provide more detail in his evaluations. He has been working on this and I believe his evaluations are stronger for it. I would like Tim to be more persistent in pursuing collateral information, for example, following up when a collateral source does not reply and putting more collateral data in his reports to increase their persuasiveness. In addition, I would like Tim to work with me in terms of quoting more effectively from secondary sources. Tim's previous supervisor valued short, to-the-point evaluations and this was a good fit with Tim's preferred writing style. I appreciate Tim's*"

¹ With no shared commonality with respect to their respective position, it becomes easy to see why any sort of mutually satisfactory resolution became essentially impossible and why the Issue is in arbitration.

willingness to move outside his comfort zone in writing longer, more analytic reports for this supervisor. In the upcoming year, Tim and I will do at least one evaluation together." Ms. Tellett went on to state, "...An area to improve on is that he tends to put off writing evaluations until the last minute with the result that I and the support staff are rushed to review and revise. A side effect is that there is no time to do anything other than very minor revisions before the report has to be sent out. Reports are often sent out less than 10 days before the hearings. A goal for the next evaluation period is to submit evaluations with more lead time."

The report went on to outline several specific performance goals for Mr. Heck for the next report period, among them; 1) *Give rough drafts of reports to support staff at least 3 days prior to the due date,* 2) *Continue working with the supervisor on increasing he amount of detail and analysis in evaluations, co-evaluate one case with supervisor and* 3) *Process cases with supervisor prior to writing to identify and fill possible gaps.*

Ms. Tellett's 2010 Performance Report for Mr. Heck clearly indicates that his work performance was below par and in need of improvement in at least two specific areas. His overall performance rating was "Fully Capable" Ms. Tellett's comments appear to indicate that Mr. Heck's perceived performance deficiencies were limited in scope and internal to Family Court Services at that time.

- In 2011 Mr. Heck was assigned to do an evaluation in a Parenting Time case being presided over by District Court Judge Jane Ranum. In a subsequent written Court Decision in that matter, Judge Ranum made a number of critical comments about the quality of Mr. Heck's work in the matter. In her Decision, Judge Ranum noted that Mr. Heck's initial evaluation report had been submitted to an independent outside source to critique the inadequacies of that report. Among the critical comments set forth in Ranum's Decision regarding Mr. Heck's work;
 - a) *"Mr. Heck failed to adequately address two key issues ordered to be evaluated by the Court..."*
 - b) *"The Court finds that Mr. Heck never reviewed the Guardian Ad Litem report or other official court records..."*
 - c) *"The Court finds that Mr. Heck failed to provide any basis for his recommendation that..."*
 - d) *"Mr. Heck fails to state any factual basis for his statement that..."*
 - e) *"Mr. Heck did not review any records from _____ and failed to state credible and sufficient facts to support his statement that..."*
 - f) *"Mr. Heck fails to adequately explain the basis for the difference in his description of..."*

- g) *"Mr. Heck fails to explain his recommendation for a parenting time consultant, when the parties have already agreed to and retained a parenting time expeditor..."*
- h) *"Mr. Heck's parenting time evaluation report is fundamentally flawed and must be rejected for the reasons stated above."*

For reasons unknown and upon which the Record is silent, Family Court Services management apparently did not become aware of Judge Ranum's 2011 Decision, as above, until early in 2012. At that time Supervisor Weinstein contacted Judge Ranum to discuss a more recent Decision by her in which she was critical of Mr. Heck's work performance regarding a case evaluation which he had submitted to her. During that discussion, she apprized him of her earlier Decision, also critical of Heck's work.

- In about October, 2011, Mr. Heck was assigned to do an evaluation in a Parenting Time and Custody which was being presided over by Judge Ranum. In her subsequent Decision in the matter, Judge Ranum made several critical comments regarding the quality of Mr. Heck's work in the matter;
 - a) *"..this Court finds Mr. Heck's report to be insufficient in many regards. First, Mr. Heck failed to conduct any fundamental backup investigation before making conclusory statements regarding the matter at hand and before accepting as fact one party's account of events. This lack of investigation in several instances led to an incomplete information, analysis and testimony provided to the Court. Additionally, some of the facts provided by Mr. Heck to the Court were clearly erroneous. As a result of this deficient report, the Court has insufficient information to determine..."²*
 - b) *Several instances in which Mr. Heck failed to conduct a proper investigation before making a recommendation to the Court are illustrated below. Other instances of Mr. Heck's inadequate investigation are documented throughout this order."*

As promised, Judge Ranum subsequently proceeded to outline, in detail, each instance in which she found Heck's evaluation work and work product to be deficient. In view of the foregoing, it would not be of further value to enumerate and review each of those comments.

The situations and incidents outlined above clearly establish that Mr. Heck was experiencing significant and serious work performance problems, on a recurring basis, over a period of years and prior to Mr. Weinstein becoming his supervisor.

² Judges and Arbitrators share the same goal of making fair, reasoned and correct decisions in connection with the matters before them. However both are also subject to the quality, accuracy and completeness of the information provided to them by the parties in the matter. What is that old adage, *"Garbage in - garbage out?"*

Clearly, Mr. Weinstein's major fault was discovering, compiling and presenting these facts to Mr. Heck in an effort to assist him in recognizing, acknowledging and correcting his obviously sub-standard work performance.

Nowhere in the Record, do Mr. Heck or the Union dispute these facts as outlined and I, therefore, find the Union's specific arguments, assertions and contentions, as above, to be either irrelevant or otherwise without merit.

Accordingly, I find that the County did have sufficient information and basis, at all times material herein, to conclude that Mr. Heck was experiencing significant work performance problems.

As indicated previously, apparently Ms. Tellett's 2010 notations, regarding specific areas in which Mr. Heck needed to improve his work performance, indicate that she felt that Mr. Heck would readily take action to correct the deficiencies. Therefore, she did not contemplate disciplinary action and/or a Performance Improvement Plan (PIP), at that time.

When newly installed Supervisor Weinstein suddenly became aware of Judge Ranum's Decisions in early 2012, the situation became more critical; because now Mr. Heck's work performance problems were no longer just an internal matter within Family Court Services division. His performance problems were now openly affecting his relationship with FCS's "customers"; the Court and the citizens involved in his cases. That situation, in turn, directly reflected on the reputation and credibility of FCS and its staff.

After carefully reviewing Mr. Heck's situation and status in February and March, 2012, Weinstein and FCS management concluded that immediate action had to be taken to help Heck avoid a continuation of the problems and to assist him in taking corrective action.

As previously noted in the Background facts (pp. 5-6), above, On March 6, 2012 Mr. Heck was given a one (1) day disciplinary suspension for his misconduct in the Ranum cases.

Subsequently, on about March 23, 2012, Mr. Heck was presented with management's proposed Performance Improvement Plan (PIP), to which he agreed. (See Background, pp. 6-8, above)

There was no grievance from Heck regarding either the disciplinary suspension or the PIP.

The PIP situation:

As noted in Background, pp. 8-11, Mr. Heck was a less than enthusiastic participant in the PIP. As he acknowledged in the hearing, he didn't like or

respect Mr. Weinstein, as his supervisor. As he subsequently stated to Weinstein, he felt he had been forced into the PIP and should have defended himself more forcefully from having the PIP imposed on him. Mr. Heck clearly didn't think there were really any problems with his work performance and that the PIP was unnecessary and merely a tool that was going to be used by Mr. Weinstein to get rid of him. As a result, it is obvious that Mr. Heck never took the PIP seriously; that is, as an instrument designed and intended to assist him in correcting his work behavior and performance to meet the standards routinely expected of him.

Additionally, Mr. Heck requested assignment to a different supervisor and attempted to transfer to positions elsewhere in DOCCR. One can reasonably assume that at least part of Mr. Heck's motivation for those actions was to escape from the PIP.

The PIP situation came to a critical point in late December, 2012 and early 2013 as Weinstein and FCS management learned that Heck was again enmeshed in the same old work performance problems in connection with an evaluation case that he had been working on since October, 2012 for Judge Robben.³

As part of its overall investigation, FCS management interviewed Mr. Heck on January 17, 2013 and he had a full opportunity to address the allegations pending against him.

Based upon the investigative findings, it was the conclusion of FCS management that Mr. Heck had again engaged in misconduct in the course of his work performance that was the same or similar in nature to the conduct for which had been previously disciplined with a one (1) day suspension on March 6, 2012. In an obvious effort to get his attention and impress upon him the seriousness of his work performance problems, management determined that a three (3) day disciplinary suspension would now be appropriate. The disciplinary action was formally issued to Mr. Heck on January 29, 2013 and he grieved it (See Background, pp.11-12)

³ Why and how did Mr. Heck get himself into this problem situation? Based on the Record testimony and evidence and "connecting some dots", it appears that in about December, 2012 Mr. Heck realized that he had fallen behind in the investigation and preparation of the evaluation in the case for Judge Robbens. With the due date for that report rapidly approaching, he also knew that, because of the PIP, it would not be beneficial to advise Weinstein of the situation or formally request a continuance of the case. He apparently decided that the only way out of the situation was to force a settlement, which would automatically obviate the need for the evaluation report and would clear the matter from the Court docket on time. However, his effort to force a settlement was unsuccessful. In Court on January 23, 2013, the party that had formally complained to FCS about Mr. Heck's conduct in trying to force them into the settlement, refused the settlement. Because there was no evaluation report available to otherwise resolve the matter, Judge Robben was compelled to continue the case and ordered that the case be returned to Family Court Services for further processing, e.g. the preparation of a proper evaluation report.

Based upon the foregoing and the Record testimony and evidence, as a whole;

I find that the Employer did possess sufficient evidence on January 29, 2013 of serious work misconduct by Mr. Heck.

I further find that the misconduct was the same or similar in nature to the misconduct for which he had received a one (1) day disciplinary suspension about 10 months earlier and that the three (3) day disciplinary suspension imposed was reasonable, measured and appropriate under the totality of the circumstances.

I also find, in the absence of any objections or challenges by Mr. Heck or the Union, that the Employer did afford Mr. Heck appropriate "due process" in a full, fair and non-discriminatory manner, before determining if and what disciplinary action might be required.⁴

CONCLUSIONS

In view of my analysis, discussion and findings above, I conclude that the Employer, by a preponderance of the evidence, did have sufficient evidence to establish "just cause" and impose a three (3) day disciplinary suspension on employee Timothy Heck on January 29, 2013. I further conclude that that the disciplinary action was in full conformance with the requirement for Just Cause as set forth in Article 32, Section 1 of the applicable labor agreement.

DECISION

Having concluded that the Employer did not violate the applicable labor agreement, as alleged by the Union in its Grievance of February 19, 2013, the grievance is hereby denied and dismissed. Concurrently, the Employer's discipline decision with respect to Mr. Heck is hereby sustained.

Dated at Minneapolis, Minnesota, this 28th Day of July 2014.

/s/ Frank E. Kapsch, Jr.
Arbitrator

Note: I shall retain jurisdiction in this matter for a period of twenty-one (21) calendar days from the issuance of this Decision to address any questions or problems related thereto.

⁴ See "*Toward a Theory of 'Just Cause' in Employee Discipline Cases*", 85 Duke Law Journal 594 (1985), Roger I. Abrams and Dennis R. Nolan. Also, Enterprise Wire Co., 46 LA 359 (Caroll R. Daugherty, 1966).